

GAHC010059622023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1534/2023

BINAY KUMAR DIWANA
SON OF SRI SHREEKRISHNA CHAURASIA,
RESIDENT OF TYPE-III, QUARTER NO. 14,
NHPC COLONY, GERUKAMUKH,
IN THE DISTRICT OF DHEMAJI,
PIN- 787035, ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY (POWER),
SHRAM SHAKTI BHAWAN, RAFI MARG,
NEW DELHI, DELHI- 110001.

2:NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

3:THE EXECUTIVE DIRECTOR (HR)
NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

4:THE GENERAL MANAGER (HR)

NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

5:THE DEPUTY GENERAL MANAGER (HR)
NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003

For the Petitioner : **Mr. P.P. Baruah, Adv.**

Mr. D. Goswami, Adv

For the Respondents: Mr. P. K. Tiwari, Sr. Adv.
Mr. A.R. Gogoi, Adv.

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 02/05/2023.

Date of judgement : 02/05/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. P.P. Baruah along with Mr. D. Goswami, learned counsel appearing for the writ petitioner. Also heard Mr. P.K. Tiwari, learned senior counsel assisted by Mr.A.R. Gogoi, learned counsel for the respondent nos. 2 to 5 and the applicants in IA(C) 1026/2023. None has appeared for the respondent no. 1. This writ petition has been taken up for disposal at the stage of admission hearing with the consent of the learned counsel for both the sides.

2. The petitioner herein, is working as Manager (Civil) and posted at the Lower Subansiri Hydro Electric Project (HEP) in the district of Dhemaji, Assam. Assailing the transfer order dated 10/03/2023, by means of which, the petitioner was transferred from Lower

Subansiri Hydro Electric Project and posted at Baira Siul PS, the instant writ petition has been filed, inter-alia, contending that this is a case of frequent transfer and the transfer order has also been issued with the *mala fide* intent of causing harassment to the petitioner. According to the petitioner's counsel, his client had been posted at the Lower Subansiri Hydro Electric Project only 13 (thirteen) months back and, therefore, before completion of normal tenure of posting, the petitioner has been sought to be shifted again and that too, without the approval of the Chairman-cum-Managing Director (CMD) of the respondent no. 2.

3. Taking note of the arguments made by the learned counsel for the writ petitioner, this Court had passed an interim order dated 17/03/2023, suspending the operation of the transfer order dated 10/03/2023 *qua* the petitioner. The connected Interlocutory Application being IA(C) No. 1026/2023 has been filed by the respondent nos. 2 to 5 seeking vacation/modification of the order dated 17/03/2023 passed by this Court.

4. Mr. P.P. Baruah, learned counsel for the writ petitioner has argued that there are 9 (nine) other Officers of the same grade posted at Lower Subansiri Hydro Electric Project (HEP) but the petitioner has been picked up for pre-mature transfer, without there being any justifiable ground for doing so. According to Mr. Baruah, this is not a transfer order issued in the exigency of public service and the said fact will be established once the departmental records are produced before this Court.

5. Countering the arguments advanced by the petitioner's counsel, Mr. P.K. Tiwari, learned counsel appearing for the respondent nos. 2 to 5 has argued that the transfer order is purely in the exigencies of service and has been issued in strict compliance with the transfer policy of the respondent no. 2. By taking the Court through the transfer policy, Mr. Tiwari has further argued that there are 3 (three) types of posting under the respondent no.2, viz. (1) hard posting, (2) difficult posting and (3) soft posting. The present transfer order envisages shifting of the petitioner from one soft posting, viz. Lower Subansiri Hydro Electric Project to another soft posting, viz. Baira Siul PS. Mr. Tiwari further submits that during the entire service career of the petitioner commencing from 19/01/2004, he has been given only one "hard posting" till today at Tawang Basin during the period from 01/07/2009 to 09/01/2011 and the rest of the tenure of the petitioner has all along been soft posting. Moreover, submits Mr. Tiwari, clause 3.2 of the Transfer Policy mandates that no employee be allowed to stay within one region or within one cluster for more than 10 (ten) years. Despite

the same, taking note of the personal difficulty faced by the petitioner, he has been allowed to remain in Cluster-III (soft posting) for a continuous period more than ten years and even now, he has been posted in an area which comes under cluster-III.

6. By referring to the statements made in the application filed in IA(C) 1026/2023, Mr. Tiwari has argued that there are genuine reasons for which the petitioner has been transferred and since no case of *mala fide* and / or violation of any statutory provision or condition of service of the petitioner is made out, the writ petition is liable to be dismissed with cost. In support of his argument, Mr. Tiwari has placed reliance on a decision of the Supreme Court rendered in the case of ***State of UP and others Vs. Gobardhan Lal*** reported in ***(2004) 11 SCC 402***.

7. I have considered the submissions advanced by learned counsel for both the sides and have also gone through the materials available on record.

8. By means of his pleadings in the writ petition, more particularly, the table in para 5 of the writ petition, an attempt has been made by the writ petitioner to project that he has been subjected to frequent transfer. However, on a closure scrutiny of the table given in para 5 of the petition, I find that the petitioner has been effectively transferred only on six occasions in his 19 years of service career as the other transfers were all from one office to another within the same location and, therefore, would not come within the meaning of frequent transfer. Six transfers in a span of 19 years, by any stretch of reasonable reckoning, in the opinion of this Court, cannot amount to frequent transfer.

9. In so far as the transfer policy of the NHPC is concerned, here also, I find that there is a clear policy not to allow any employee to continue in soft posting or in the same cluster for a period of more than 10(ten) years but in the present case, the petitioner has been posted within the same cluster i.e. Cluster-III even-though, he has spent more than ten years in soft postings and same cluster. I also find from the clauses 3.4 and 3.5 of the transfer policy that the residual power in the matter of transfer vest on the CMD of the organization, who is entitled to take a decision on the question of transfer of any employee from hard/difficult to soft posting and vice-versa. It appears that the benefit under clause 3.5 of the transfer policy has been extended to the petitioner in this case by allowing him to continue in a soft posting beyond the period of ten years.

10. The reason as to why the petitioner has been transferred from Lower Subansiri

Hydro Electric Project to Baira Siul PS has been spelt out in paragraph 15 of the application filed by the respondent nos. 2 to 5 in IA(C) 1026/2023, which is reproduced herein below for ready reference :-

“15. That in the case of the petitioner, his transfer was felt necessary to meet exigencies of work at Bairasiul Power Station, which has shortage of executives of Civil discipline, whereas Subansiri Lower Hydro Electric Project has adequate number of executives of civil discipline. In Bairasiul Power Station against the sanctioned strength of 13 executives of civil discipline, there are only 11 executives of civil discipline, whereas in Subansiri Lower Hydro Electric Project against the sanctioned strength of 47 executives of civil discipline, there is a posted strength of 54 executives of civil discipline. To meet the shortfall in the executives of civil discipline at Bairasiul Power Station, the Management deemed it fit to transfer the petitioner, who is an executive of civil discipline of E-5 category. Hence, the impugned order of petitioner’s transfer was issued in administrative exigencies in public interest.”

11. In the counter affidavit filed by the writ petitioner/opposite party, the only response to the said pleading is that there were other officers numbering about 10(ten) in total, who could have been considered for shifting from the present post but the authorities had picked up the writ petitioner with a *mala fide* intent. The learned counsel for the petitioner could, however, not substantiate his plea that the petitioner was chosen for transfer with *mala fide* intent. Moreover, merely because there are other officers of the same rank serving in the same station, who could have been chosen for transfer, that cannot by itself be a ground for this Court to hold that the transfer order was actuated by malice towards the petitioner and, therefore, was liable to be interfered with by this Court.

12. Law is well settled that transfer is an incident of service and the scope for this Court to interfere with such an order of transfer in a writ petition is very limited. It is not open for a Government servant or an employee of a Corporation to sit in appeal over an order of transfer and decide as to whether the order is correct or not merely because he/she desires to continue in a particular place of posting which is convenient to him/her. The aforesaid aspect of the matter has been aptly dealt with by the Hon’ble Supreme Court in the case of

Gobardhan Lal (Supra) in para 7, which is reproduced herein below for ready reference :-

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

13. As noted above, the petitioner has failed to point out violation of any statutory provision nor could it be shown that the impugned order of transfer, in any manner, interferes with the petitioner’s condition of service. The petitioner’s counsel has also fairly submitted that the transfer order does not envisage any violation in the condition of service of the petitioner. Under the circumstances, the only ground in which the order could have been interfered with by this Court was on making out a *prima facie* case of the order having been issued with a *mala fide* intent. However, no such case has been made out. There is no right

of the petitioner that can be enforced in this writ petition.

14. In view of the above, I am of the opinion that there is no good ground for this Court to interfere with the order of transfer dated 10/03/2023. As such, the writ petition is held to be devoid of any merit and the same is accordingly dismissed. The interim order dated 17/03/2023 stands vacated.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant